

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 2:93-0654

AMERICAN CYANAMID COMPANY, INC.,
et al.

Defendants,

v.

AFF INC. et al.

Third-Party Defendants,

and

STATE OF WEST VIRGINIA, INTERVENOR.

**SECOND AMENDMENT TO CONSENT DECREE
ENTERED FEBRUARY 19, 1997**

WHEREAS, the Consent Decree in this matter was entered by this Court on February 19,
1997;

WHEREAS, the first amendment to the Consent Decree was entered by this Court on
July 10, 1997;

WHEREAS, on September 28, 2001, EPA issued a Record of Decision for Operable Unit 4 ("September 2001 OU-4 ROD") at the Site, identifying, among other things, EPA's selected remedial action for ground water for the Site;

WHEREAS, the September 2001 OU-4 ROD's selected remedy for ground water included a long-term extraction and treatment system to reduce the concentration of contaminants of concern to risk-based drinking water levels, and required additional investigation activities for data collection and remedial design activities;

WHEREAS, based on the additional ground water data collected and investigations performed by the Settling Work Defendants following the issuance of the September 2001 OU-4 ROD, EPA evaluated the suitability of other ground water remediation technologies, including *in situ* biosparging, for the Site;

WHEREAS, on December 28, 2006, following a thirty day public comment period, EPA issued an Amendment to the Record of Decision Operable Unit 4 - Ground Water Component ("OU-4 ROD Amendment") amending the ground water selected remedy component of the OU-4 ROD from extraction and treatment to *in situ* biosparging;

WHEREAS, Settling Work Defendants completed and EPA approved the design of the Phase 1 *in situ* biosparging remedy following the issuance of the OU-4 ROD Amendment. The Parties to the Consent Decree desire to continue design and implementation of the ground water remedy component as described in the OU-4 ROD Amendment, and that such design and implementation of the amended remedy be performed as Work under the Consent Decree;

WHEREAS, Settling Work Defendants agree that they are obligated to perform, pay for, and implement the remedy selected in the OU-4 ROD Amendment under Paragraphs 13 and 14 of the Consent Decree;

WHEREAS, the unamended requirements of the Consent Decree entered on February 19, 1997, as amended by the court on July 10, 1997, shall remain in full force and effect in accordance with the terms of that Consent Decree, notwithstanding the amendments set forth below;

WHEREAS, Settling Defendant, OHM Remediation Services, Corp. ("OHM"), was liquidated in bankruptcy in *In re The IT Group, Inc., et al.*, No. 5381 (Bankr. D. Del. Sept. 1, 2004). OHM has no surviving corporate entity or any remaining claims relating to the Site, and accordingly, OHM is not a signatory to this amendment;

NOW, THEREFORE, the Consent Decree in this matter is amended as follows:

1. Section IV, Definitions, paragraph 4, page 17, the definition of OU-4 ROD is amended to read:

"OU-4 ROD" or "Record of Decision for OU-4" shall mean the EPA ROD relating to the Operable Unit 4 at the Site, signed on September 28, 2001 by the EPA Region III Regional Administrator, and all attachments (including any ESDs) thereto, and shall include the Amendment to the Record of Decision Operable Unit 4-Ground Water Component, dated December 28, 2006.

2. Section IV, Definitions, paragraph 4, page 19, the definition of Record of Decision or ROD is amended to read:

"Record of Decision" or "ROD" shall mean an EPA Record of Decision relating to the Operable Unit specified by that ROD for the Site signed by the Regional Administrator, EPA Region III, or his/her delegate, and all attachments (including ESDs) thereto, except that for OU-4 this term

**shall include the Amendment to the Record of Decision Operable Unit
4-Ground Water Component, dated December 28, 2006.**

3. Section VIII, Modification of the Work, paragraph 27.b, page 55, is amended to read:

- b. For the purposes of this Paragraph only, **but with the exception of the OU-4 ROD, which was amended on December 28, 2006,** the “scope of the remedy selected in the ROD” shall be the remedial alternative selected in the original ROD, exclusive of ESDs and ROD amendments. For the purposes of Section XV (Certification of Completion.), Paragraph 57 (Completion of the Work) only, the “scope of the remedy selected in the ROD” shall be the remedial alternative selected in the original ROD, as modified by any ESDs and ROD amendments.

5. The second and third sentences of paragraph 96, page 124, of the Consent Decree are amended to read:

96. All payments to the United States under this Section shall be paid by certified or cashier’s check(s) made payable to “EPA Hazardous Substances Superfund,” shall be mailed to the United States Environmental Protection Agency, Region III, Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA **15251-6515**, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #0310, the DOJ Case Number 90-11-3-706, and the name and address of the party

making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVII (Notices and Submissions), and to the Docket Clerk (3RC00), United States.

Environmental Protection Agency, Region III, 1650 Arch Street,
Philadelphia, PA 19103-2029.

6. Section XXVII, Notices and Submissions, paragraph 35, page 150, is amended to read:

As to the State:

State Project Coordinator
West Virginia **Department** of Environmental Protection
Site Investigation and Response
601 57th Street, SE
Charleston, West Virginia 25304

SO ORDERED THIS _____ DAY OF _____, 2008.

United States District Judge
Southern District of West Virginia

THE UNDERSIGNED PARTY enters into this Second Amendment to the Consent Decree in the matter of United States v. American Cyanamid, et al., relating to the Fike/Artel Chemical Company Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 11 November 2008

✓ RONALD J. TENPAS ✓
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: December 10, 2008

BRITTA G. HINRICHSEN
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044

Date: Dec 12, 2008

KENT HANSON
Trial Attorney
Environmental Defense Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044

THE UNDERSIGNED PARTY enters into enters into this Amended Consent Decree in the matter of United States v. American Cyanamid, et al., relating to the Fike/Artel Chemical Company Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: January 9, 2009

Assistant United States Attorney
Attorney for United States (WVSB 890)
U.S. Department of Justice
300 Virginia Street, East, Room 4000
Charleston, WV 25301
Phone: 304-345-2200
Fax: 304-347-5443

THE UNDERSIGNED PARTY enters into enters Amended Consent Decree in the matter of United States v. American Cyanamid, et al., relating to the Fike/Artel Chemical Company Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 9/30/08

DONALD S. WELSH
Regional Administrator, Region III
U. S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Date: 9/26/08

WILLIAM C. EARLY
Regional Counsel, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Date: 9/29/08

HUMAYNE (L. ZIA)
Senior Assistant Regional Counsel, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

THE UNDERSIGNED PARTY enters into this Amended Consent Decree in the matter of United States v. American Cyanamid, et al., relating to the Fike/Artel Chemical Company Superfund Site.

FOR THE STATE OF WEST VIRGINIA

Date: 5/12/08

RANDY HUFFMAN, SECRETARY
West Virginia Department of Environmental
Protection
601 57th Street, SE
Charleston, West Virginia 25304

Date: May 8, 2008

/_____
MARK J. RUDOLPH, SENIOR COUNSEL
Office of Legal Services
West Virginia Department of Environmental
Protection
601 57th Street, SE
Charleston, West Virginia 25304

THE UNDERSIGNED PARTY enters into this Amended Consent Decree in the matter of United States v. American Cyanamid, et al., relating to the Fike/Artel Chemical Company Superfund Site.¹

FOR HERCULES INCORPORATED

Date: 7/25/08

Name: THOMAS H. STRANG
Title: V.P. SHERA
Address: 1313 NORTH MARKET ST.
WILMINGTON DE 19804

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:
Title:
Address:

Tel. No.:

¹ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States. Each undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions of this consent decree amendment.

THE UNDERSIGNED PARTY enters into this Amended Consent Decree in the matter of United States v. American Cyanamid, et al., relating to the Fike/Artel Chemical Company Superfund Site.¹

FOR SETTLING WORK DEFENDANTS

Date: 7/31/08

Name: William H. Hyatt, Jr.
Title: Common Counsel
Address: Ktl Gates
One Newark Center 10th Fl.
Newark, NJ 07102
phone: 973-848-4000

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:
Title:
Address:

Tel. No.:

¹ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States. Each undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions of this consent decree amendment.

THE UNDERSIGNED PARTY enters into this Amended Consent Decree in the matter of United States v. American Cyanamid, et al., relating to the Fike/Artel Chemical Company Superfund Site.¹

FOR N.S. BERCHTOLD

Date: 7/10/08

Name: NICHOLAS G BERCHTOLD
Title: PERSONAL
Address: 653 TIMBER CREEK DR
ARLON, OHIO 44335-1755

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Nicholas G. Berchtold
Title:
Address: 1270 S. Cleveland-Massillon Road
Copley, Ohio 44321
Tel. No.: 330.666.5200

¹ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States. Each undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions of this consent decree amendment.

THE UNDERSIGNED PARTY enters into this Amended Consent Decree in the matter of United States v. American Cyanamid, et al., relating to the Fike/Artel Chemical Company Superfund Site.¹

FOR BERCHTOLD FAMILY LIMITED
PARTNERSHIP

Date: 7/10/08

Name: NICHOLAS G BERCHTOLD
Title: GENERAL PARTNER
Address: 1270 S CLEVELAND-MASSILLON RD
COPELY OHIO 44321

Agent Authorized to Accept Service on Behalf of Above-signed Party:
Nicholas G. Berchtold

Name: 1270 S. Cleveland-Massillon Road
Title: Copley, Ohio 44321
Address:

330.666.5200

Tel. No.:

¹ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States. Each undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions of this consent decree amendment.

THE UNDERSIGNED PARTY enters into this Amended Consent Decree in the matter of United States v. American Cyanamid, et al., relating to the Fike/Artel Chemical Company Superfund Site.¹

FOR PATRICIA BERCHTOLD

Date: 7/10/09

Name: Patricia Berchtold
Title:
Address: 653 Timber Creek Drive
Akron OH 44333

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:
Title:
Address: Patricia Berchtold

1270 S. Cleveland-Massillon Road
Copley, Ohio 44321

Tel. No.: 330.666.5200

¹ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States. Each undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions of this consent decree amendment.

THE UNDERSIGNED PARTY enters into this Amended Consent Decree in the matter of United States v. American Cyanamid, et al., relating to the Fike/Artel Chemical Company Superfund Site.¹

FOR CASA CONTRUCTION, INC.

Date: 7/10/08

Name: _____
Title: Defunct Business
Address: _____

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:
Title:
Address:

Nicholas G. Berchtold

Tel. No.: 1270 S. Cleveland-Massillon Road
Copley, Ohio 44321
330.666.5200

¹ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States. Each undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions of this consent decree amendment.

THE UNDERSIGNED PARTY enters into this Amended Consent Decree in the matter of United States v. American Cyanamid, et al., relating to the Fike/Artel Chemical Company Superfund Site.¹

FOR MAKTEL PROPERTIES, INC.

Date: 7/10/09

Name: NICHOLAS G. BERCHTOLD
Title: President
Address: 103 SKELTON RD
BERON, OHIO

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:
Title:
Address: Nicholas G. Berchtold

1270 S. Cleveland-Massillon Road
Copley, Ohio 44321

Tel. No.: 330.666.5200

¹ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States. Each undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions of this consent decree amendment.

THE UNDERSIGNED PARTY enters into this Amended Consent Decree in the matter of United States v. American Cyanamid, et al., relating to the Fike/Artel Chemical Company Superfund Site.¹

FOR CHEMICAL ASSOCIATES
TRANSPORTATION, INC.

Date: 7/10/08

Name: N G BERCHTOLD
Title: PRESIDENT
Address: 1270 S CLEVELAND-MASSILLON
COPELY, OHIO 44321

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:

Title:

Address:

Nicholas G. Berchtold

1270 S. Cleveland-Massillon Road
Copley, Ohio 44321

Tel. No.:

330.666.5200

¹ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States. Each undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions of this consent decree amendment.

THE UNDERSIGNED PARTY enters into this Amended Consent Decree in the matter of United States v. American Cyanamid, et al., relating to the Fike/Artel Chemical Company Superfund Site.¹

FOR CHEMICAL ASSOCIATES OF
ILLINOIS, INC.

Date:

7/10/09

Name: NICHOLAS G. BERCHTOLD
Title: PRESIDENT
Address: 1270 S CLEVELAND MASSILLON
OHIO 44321

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:

Title:

Address:

Nicholas G. Berchtold

1270 S. Cleveland-Massillon Road
Copley, Ohio 44321

Tel. No.:

330.666.5200

¹ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States. Each undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions of this consent decree amendment.

THE UNDERSIGNED PARTY enters into this Amended Consent Decree in the matter of United States v. American Cyanamid, et al., relating to the Fike/Artel Chemical Company Superfund Site.¹

FOR CHEMICAL ASSOCIATES, INC.

Date:

7/10/08

Name:

Title:

Address:

NICHOLAS G. BERCHTOLD
DEFUNCT BUSINESS

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:

Title:

Address:

Nicholas G. Berchtold

1270 S. Cleveland-Massillon Road
Copley, Ohio 44321

Tel. No.:

330.666.5200

¹ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States. Each undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions of this consent decree amendment.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing United States' Second Amendment to Consent Decree Entered February 19, 1997, has been served by United States first-class mail on this 9th day of January, 2009, upon the following:

Mark J. Rudolph

Office of Legal Services
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

William H. Hyatt, Jr.

K&L Gates
One Newark Center, 10th floor
Newark, NJ 07102

Thomas H. Strang

1313 North Market St.
Wilmington, DE 19894

David W. Hilkert

Buckingham, Doolittle & Burroughs, LLP
3800 Embassy Parkway, Suite 300
Akron, Ohio 44333-8332

Britta G. Hinrichsen